

Highlights of 2007 State Chaptered Legislation

The legislation noted below is a compendium of many, but not all of the legislation that may have an impact on financial institutions. Copies of these enrolled bills may be found at <http://www.leginfo.ca.gov/bilinfo.html>

AB7 (Lieu & Saldana), Chapter 358, Statutes of 2007). Armed Services Members: Consumer Loans.

Effective October 9, 2007, this bill, among other things requires any state chartered bank or credit union that makes a refund anticipation loan to a covered borrower (a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer, or such a member serving on Active Guard and Reserve duty, or the member's spouse, the member's child, or an individual for whom the member provided more than one-half of the individual's support for 180 days), shall comply with Section 670 of Public Law 109-364 and Section 232 of Title 32, Code of Federal Regulations, that provides, among other things, an annual percentage rate limitation of 36%, on consumer credit loans, defined as payday loans, vehicle title loans and tax refund anticipation loans. The bill also provides that a bank or credit union that does not market or extend those loans is not in violation of Section 394 of the Military and Veterans Code (discrimination against any officer or enlisted member of the military or naval forces of the state or United States because of that membership).

AB 262 (Coto). Chapter 679, Statutes of 2007. Public Post Secondary Education.

This bill, among other things, requests the Regents of the University of California, and requires the Board of Trustees of the California State University and the Board of Governors of the California Community Colleges to: annually direct each campus to disclose all exclusive arrangements, excluding proprietary information, with banks or other commercial entities engaging in on-campus marketing of credit cards to students through solicitation activities in public campus areas, referred to as "tabling" activities; prohibit banks and other commercial entities, including their third-party representatives, from offering gifts to students for completing student credit card applications during on-campus tabling activities and allow banks and other commercial entities, including their third-party representatives, to rely on the self-identification of students for purposes of complying with this provision. The bill also urges the UC Board of Regents to remove all exemptions from its policies guiding the on-campus marketing of credit cards to students.

AB 341 (Spitzer). Chapter 159, Statutes of 2007. Estates & Trusts: Creditor's Claims.

This bill establishes, to the extent possible, a uniform regime for the treatment of creditors' claims regardless of whether the decedent utilized a will or revocable trust as the primary estate planning instrument, while still preserving the substantive distinction between a probate proceeding and a trust administration for creditors. This bill: defines "creditor" as a person with a claim against estate property and uses the term in place of claimant; increases the time for a creditor to file a claim against an estate being distributed pursuant to a trust after receiving notice from the estate, from 30 days to 60 days, to provide parity with time limits for filing claims in probate; clarifies that a creditor's claim cannot otherwise extend a statute of limitations; applies the process for filing late claims in probate proceedings to the filing late claims in trust administration; corrects a reference for the time period allowed the Franchise Tax Board ("FTB") to file a claim against an estate in trust administration to conform to the time period allowed the FTB to file a claim against an estate in probate; requires a trustee to provide notice of the decedent's death to the Director of Health Services if the decedent was a surviving spouse of a person who received Medi-Cal benefits; provides that if property in a trust is distributed before expiration of the time for a public entity to file a claim, the public entity's claim includes interest at a rate consistent with the rate charged in probate proceedings; and in trust administration, requires that a decedent's family members, who were supported in whole or in part by the decedent, and who want to make a claim of exemption, as a result of that support, for property that is levied under a writ of attachment, must use the exemption process for changed circumstances.

AB 361 (Ma). Chapter 105, Statutes of 2007. Decedents' Estates: Creditor Claims.

This bill requires the general personal representative or attorney of a decedent's estate to give notice of the administration of the estate to the Franchise Tax Board not later than 90 days after the date letters of administration are first issued. The bill applies to all decedents' estates for which letters of administration are first issued on or after July 1, 2008.

AB 1508 (Lieu). Chapter 242, Statutes of 2007. Transmission of Money Abroad.

This Department of Financial Institutions ("Department") sponsored bill: eliminates agent authorizations and branch applications of agents and transmitters of money abroad ("TMA") licensees; requires that liquid assets be maintained by the TMA in an amount not less than the aggregate amount of all reported outstanding transmission money; provides for the filing of transmission of money abroad receipts with the commissioner within 10 days after their use, and requires new TMAs to obtain approval of receipts prior to their use; and enables the

Department to immediately revoke or suspend a TMA when it is in the interests of the public to do so.

AB 1518 (Assembly Banking & Finance Committee). Chapter 148, Statutes of 2007. Credit Unions.

This bill: authorizes credit union examination reports to be disclosed to internal and external auditors and attorneys of the credit union that are retained by the subject, but only to the extent necessary for the auditors and attorneys to conform work related to issues addressed in the report; authorizes a credit union to become a member of an organization composed of community economic development entities and business or trade organizations; changes the \$1,000 limit on credit union gifts or donations to \$25,000 and also authorizes the board of directors of a credit union to establish a budget for gifts and donation; authorizes the board of directors of a credit union to appoint an executive committee to act as expressly approved by the board; delegates the power to approve applications for new membership to specified individuals as long as the board reviews a report of membership application at least quarterly; provides that a member who is withdrawing membership from a credit union may be required to give specified notice of intention to withdraw shares; and authorizes a credit union to issue shares and enter into obligations with nonmembers if they are a joint applicant or co-obligor with a member of the credit union.

AB 1528 (Assembly Banking & Finance Committee). Chapter 363, Statutes of 2007. Military Service.

Effective January 1, 2008, this bill prohibits a person or entity licensed under the Business and Professions Code, Corporations Code, Financial Code, or Insurance Code from marketing financial services in a misleading or deceptive manner to a service member, former service member, or the spouse of a service member or former service member, that suggests it is affiliated with the United States military or Department of Veterans Affairs. The bill provides that these provisions do not apply to any bank or credit union.

AB 1723 (Assembly Judiciary Committee). Chapter 422, Statutes of 2007. Attorney's: IOLTA Accounts.

The bill defines "IOLTA account" to mean an account or investment product that is established and maintained by a lawyer or law firm as required by law that is (1) an interest-bearing checking account, (2) an investment sweep product that is a daily (overnight) financial institution repurchase agreement or an open-end money-market fund, or (3) any other investment product authorized by California Supreme Court rule or order. The bill requires attorneys and law firms to deposit or invest the specified client funds in IOLTA accounts, and requires that the interest or dividends earned on the accounts be paid to the State Bar of California. The IOLTA account must be established and maintained with an

eligible institution (a bank or such other financial institutions as are authorized by the Supreme Court) offering or making available an IOLTA account meeting specified interest or dividend paying requirements, including offering a rate of interest or dividends on the IOLTA account that is not less than that generally paid to non-attorney customers on similar accounts. The bill does not require a financial institution to offer the specified IOLTA accounts. If offered, the bill authorizes an eligible institution to deduct only reasonable service or maintenance fees in accordance with customary practice of the institution for non-IOLTA customers, payable only from the interest or dividends on the account, and would make any other fees or service charges the sole responsibility of the lawyer or law firm maintaining the IOLTA account. The bill requires an eligible institution's remittance statement to include the average balance for each account for each month, requires the financial institution to remit interest or dividends on the IOLTA account, less reasonable fees, to the State Bar at least quarterly, and to transmit with each remittance a statement showing the name of the attorney or law firm for whom the remittance is sent, and for each account the rate of interest applied or dividend paid, and the amount and type of fees deducted, if any, and the average balance for each account for each month of the period for which the report is made.

SB 385 (Machado). Chapter 301, Statutes of 2007. Real Estate: Mortgages.

This bill makes findings and declarations regarding the importance of the federal Nontraditional Mortgage Guidance and Statement on Subprime Lending. The bill directs the Commissioner of the Department of Financial Institutions to apply the nontraditional mortgage product risk guidance to state-regulated financial institutions, including, but not limited to, privately-insured state-chartered credit unions. The bill directs the Commissioner of the Department of Corporations to apply the nontraditional mortgage product risk guidance issued by the CSBS and the AARMR in November 2006 to licensed finance lenders and residential mortgage lenders. The bill also directs the Commissioner of the Department of Real Estate DRE to apply the CSBS/AARMR guidance to real estate brokers. The bill authorizes all three commissioners to adopt emergency and final regulations to clarify the application of the applicable guidance documents to their licensees as soon as possible. Finally, the bill requires the Secretary of Business, Transportation, and Housing ensure that all three commissioners coordinate their policymaking and rulemaking efforts related to the guidance in order to ensure that the guidance is applied consistently to all California entities engaged in the brokering, originating, servicing, underwriting, and issuance of nontraditional mortgage products.

[SB 1037](#) (Senate Banking, Finance & Insurance Committee). Chapter 99, Statutes of 2007. Financial Institutions.

This Department sponsored bill: adds a section to the Financial Code to define those activities that are not considered to be acting as a trust; incorporates amendments to resolve the confusion over the application of fiduciary activities of national banks as they should be applied to state chartered trust companies and trust departments; and adds a section to the Financial Code in order to provide a blanket exemption from a person having to apply for a negotiating permit and order of emption in instances where a bank is offering securities in a merger or acquisition of control situation.